

## Norfolk Circuit Court Clerk's Office

### The Virginia Freedom of Information Act

#### Rights & Responsibilities

#### **The Virginia Freedom of Information Act provides access as outlined below to citizens of the Commonwealth of Virginia**

The Virginia Freedom of Information Act (FOIA), located § 2.2-3700 et. seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption or other law applies to those records.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

#### **Your FOIA Rights**

- You have the right to request to inspect or receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA.

#### **Making a Request for records from the Clerk of Circuit Court**

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.
  - From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives the Clerk's Office a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, the Clerk's Office cannot refuse to respond to your FOIA request if you elect not to put it in writing.
- You must provide your name and legal address.
- Your request must identify the records you are seeking with "reasonable specificity." It does not refer to or limit the volume or number of records that you are requesting. It requires that you be specific enough so that the Clerk's Office can identify and locate the records you are seeking.
- Your request must ask for records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of the Clerk's Office.

- You may choose to receive electronic records in any format used by the Clerk's Office in the regular course of business.
  - For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If the Clerk's Office has questions about your request, please cooperate with the staff's efforts to clarify the type of records you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but the Clerk's Office may need to discuss your request with you to ensure that it understands what records you are seeking.

To request records from The Circuit Court Clerk's Office, you may direct your request to Tom Larson, Chief Deputy. He can be reached at:

Norfolk Circuit Court Clerk's Office  
 100 St Pauls Blvd  
 Norfolk, Virginia 23510  
 757-664-4393  
[tlarson@courts.state.va.us](mailto:tlarson@courts.state.va.us)

In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by e-mail at [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us), or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

### **The Clerk's Office Responsibilities in Responding to Your Request**

- The Clerk's Office must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records is irrelevant, and the Clerk's Office cannot ask you why you want the records before responding to your request. FOIA does, however, allow the Clerk's Office to ask you to provide your name and legal address.
- FOIA requires that the Clerk's Office make one of the following responses to your request within the five-day time period:
  - 1) Provide you with the records that you have requested in their entirety.
  - 2) Withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, the Clerk's Office must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia or other law that allows or requires the withholding of the records.
  - 3) Provide some of the records that you have requested, but withhold other records. The Clerk's Office cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, the Clerk's Office may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. The Clerk's Office must provide you with a written response stating the specific section of the Code of Virginia or other law that allows or requires portions of the requested records to be withheld.

- 4) If it is practically impossible for the Clerk's Office to respond to your request within the five-day period, the Clerk's Office must state this in writing, explaining the conditions that make the response impossible. This provision will allow the Clerk's Office seven additional working days to respond to your request, giving the Clerk's Office a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and the Clerk's Office feels that it cannot provide the records to you within 12 days without disrupting other organizational responsibilities, the Clerk's Office may petition the court for additional time to respond to your request. However, FOIA requires that the Clerk's Office make a reasonable effort to reach an agreement with you concerning the production of the records before it goes to court to ask for more time.

### **Costs**

- You will have to pay for the records that you request from the Clerk's Office. FOIA allows the Clerk's Office to charge for the actual costs of responding to FOIA requests. These costs may include items like staff time spent searching for the requested records, copying costs or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If the Clerk's Office estimates that it will cost more than \$200 to respond to your request, the Clerk's Office will require you to pay a deposit before proceeding with your request.
- The Clerk's Office staff will estimate in advance the charges for supplying the records that you have requested. This estimate will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.

### **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Clerk's Office commonly withholds records subject to the following exemptions:

- Requests by persons incarcerated in a state, local or federal correctional facility (§ 2.2-3703(C))
- Personnel records (§ 2.2-3705.1 (1) of the Code of Virginia)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Tests or examinations used, administered or prepared for purposes of evaluation of any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or qualifications for any license or certificate (§ 2.2-3705.1 (4))
- Vendor proprietary information (§ 2.2-3705.1 (6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person (§ 2.2-3705.2 (4))
- Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information (§ 2.2-3706 (F) (1))

- The Federal Freedom of Information Act only applies to federal agencies and not to the Clerk's Office or other state agencies.

The following frequently requested records are governed by the following statutes:

- Active criminal investigations are governed by the restrictions set forth under § 52-8.3.
- Criminal history records are governed by the restrictions set forth under § 19.2-389.
- Accident reports and information regarding accidents are governed by § 46.2-379 and § 46.2-380.
- Sex Offender Registry information is governed by §§ 9.1-900 *et seq.*

Criminal intelligence files, Title 28 Code of Federal Regulations, Part 23